IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO. 2542 OF 2004

Hanil Era Textiles ... Petitioner

Vs.

State of Maharashtra and anr. ... Respondents

Mr. M.M. Vashi i/by M.P. Vashi & Associates for Petitioner.

Mr. S.M. Dixit, for Respondent No. 1.

Ms. Lata S. Desai for R. No. 2.

CORAM : F.I. REBELLO &
S.P. KUKDAY,JJ.
DATED : APRIL 27, 2005

P.C.

. Rule. Heard forthwith.

. The grievance of the Petitioner is that they are not governed by the provisions of the Maharashtra Mathadi, Hamal and other Manual Workers (Regulation of Employment and Welfare) Act, 1969. On noticing the provisions of Section 5 in the earlier petition before this court, the Petitioners herein were called upon to file their material including the documents before the State Government and thereafter for the State Government to take decision on the same. From the material on record, it appears that the Petitioners did make representation containing the material. The State

Government thereafter sought opinion of the Advisory board and by commutation dated 24.3.2004 held that the provisions of the Act are applicable. It is this order which is subject matter of the present petition.

. Section 5 of the Act reads as under:

> "If any question arises whether any scheme applies to any class of unprotected workers or employers, the matter shall be referred to the State Government and the decision of the State Government on the question, which shall be taken after consulting the Advisory Committee constituted under Section 14, shall be final."

. On reading of the provisions it will be clear that the State Government after consulting Advisory Board has to take a decision. The limited issue which we have been called upon is to consider whether the opinion given by the Advisory Board should be made available to the Petitioner or persons similarly situated like petitioners to give their say in the matter. It is no doubt true that the composition of the Advisory Board includes

representatives of the Labour, Employers and others.

. Once the power of the State Government is to take decision, the enquiry be conducted, will partake of the quasi judicial enquiry and in such matters, before coming to the opinion or deciding the issue, it is but natural that persons likely tobe affected by the order must be given all material which the State Government proposes to consider. In the instant case , opinion of the Advisory Board would be a material document for consideration by the State Government in rendering decision under Section 5 of the Act. If that be the case, it is but natural that the said opinion of the Advisory Board be made available to the Petitioner before the State Government finally decides under Section 5 of the Act. In the instant case, the Petitioner had come to the court on the ground that they were not given a hearing. Considering that a material document based on which the State Government has taken a decision was not made available to the Petitioner, the impugned order is liable to be set aside with the following directions :

(1) The order dated 31.1.2004 is set aside. The

matter is remanded back to the State Government to decide the matter afresh after giving an opportunity and making available to the Petitioners copy of the opinion given by the Advisory Board and to permit the petitioners to give their say on the said opinion. Considering the nature of controversy, the matter be decided on or before 31.7.2005.

(2) The Petitioners are directed to appear before the Hon'ble Minister on 9.6.2005 at 11.00 a.m.

(F.I. REBELLO,J.)

(S.P. KUKDAY,J.)